

California Regional Water Quality Control Board
Santa Ana Region

Update To The
NOVEMBER 21, 2003

AGENDA

Please note the following changes to the Agenda:

Item No.:

- 9 **Waste Discharge Requirements, Bruce Hohn/AVMGH II Limited Partnership, Temescal Creek Remediation Project/Inert Waste Disposal, Corona, Riverside County** — This item has been postponed.
- 11 **Report of Hearing Panel to Full Board, Kaiser Resources** — The Panel Hearing in this matter was postponed; therefore, this item has been removed from the agenda.
- 12 **Public Workshop, Basin Plan Amendment, Related to Nitrogen and Total Dissolved Solids Management in the Santa Ana Region** — Documentation for this item may be viewed on our website.
- 13 **Administrative Civil Liability Complaint, Pyro Spectaculars, Inc., San Bernardino County** — The hearing on the ACL Complaint has been removed from the agenda
- 14 **Mandatory Penalties Complaint, USA Gasoline Corporation, San Bernardino County** — This item has been postponed.
- 15 **Mandatory Penalties Complaint, Ross Pallets, Inc., Orange County** — Discharger has waived the right to a hearing.
- 16 **Mandatory Penalties Complaint, Pilkington Aerospace, Inc., Orange County** — Discharger has waived the right to a hearing.
- 17 **Administrative Civil Liability Complaint, Consolidated Container Co., Orange County** — Discharger has waived the right to a hearing.

California Regional Water Quality Control Board
Santa Ana Region

November 21, 2003

ITEM: 13

SUBJECT: Administrative Civil Liability Complaint No. R8-2003-0114 for Pyro Spectaculars, Inc.

Introduction

The matter before the Board is to consider adoption of Order No. R8-2003-0115, which would affirm Administrative Civil Liability Complaint No. R8-2003-0114 (hereinafter the Complaint). The Complaint was issued by the Executive Officer on October 28, 2003 to Pyro Spectaculars, Inc. The complaint was issued because Pyro Spectaculars, Inc. failed to comply with the Executive Officer's October 7, 2002 directive (as revised on November 6, 2002) to conduct an investigation of perchlorate in the soil and groundwater in the vicinity of the Pyro Spectaculars and Astro Pyrotechnics facilities in North Rialto. The work plans that were submitted for the investigation of these sites were approved by the Executive Officer, and were to be implemented by July 21, 2003, in accordance with the Executive Officer's Investigation Order. Pyro Spectaculars, Inc. failed to commence the investigation on July 21, 2003, and failed to submit a required work plan by July 21, 2003 for investigation of the company's former burn pit on adjacent property. Pyro Spectaculars, Inc. is alleged to have violated subdivision (a) of Section 13268 of the California Water Code, which states "Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267...is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b)."

Background

Pyro Spectaculars, Inc. operates two facilities in the City of Rialto, San Bernardino County, California: (1) Pyro Spectaculars, located at 3196 North Locust Avenue, and (2) Astro Pyrotechnics, located at 2298 West Stonehurst Drive.

The Pyro Spectaculars facility occupies approximately 25 acres of leased land located in the north half of the southwest quarter of Section 21, Township 1 North, Range 5 West, of San Bernardino Baseline and Meridian. The facility develops and produces pyrotechnics (fireworks) for public display. Pyro Spectaculars has operated at this site since 1979 (and possibly earlier). In addition, Pyro Spectaculars, Inc. leases approximately 5 acres of property that is located roughly ½ mile south of the Pyro Spectaculars facility. Storage Bunker

B-1 is located on this 5-acre parcel. Storage Bunker B-1 and several metal storage bins at this location are used for the storage of sealed pyrotechnic shells, and for packing the sealed shells into show boxes for custom fireworks display events.

Since 1988 (and possibly earlier), Pyro Spectaculars, Inc., has operated the Astro Pyrotechnics facility. This facility occupies approximately 5 acres of leased land located in the northeast corner of the intersection of Stonehurst Drive and the extension of Alder Avenue in Rialto. The facility formulates, manufactures, stores and distributes theatrical (1.4G) fireworks and pyrotechnics articles containing perchlorate salts for shipment to off-site, licensed professional customers.

Perchlorate, in the form of salts such as ammonium perchlorate and potassium perchlorate, is used as a component of solid rocket propellant, fireworks, ordnance and other explosives. Perchlorate salts are highly soluble and dissociate in water to form perchlorate ions. Thus, discharges of perchlorate salts can ultimately result in perchlorate contamination of the groundwater. Discharges of perchlorate are known to have severely impacted groundwater at a number of explosive and propellant manufacturing, testing and storage facilities throughout California. Perchlorate contamination of groundwater in the Rialto-Colton-Fontana area has resulted in either the closure or restricted use of 20 municipal water supply wells belonging to four water purveyors. Groundwater flow in the Colton and Rialto Subbasins is generally toward the southeast, in alignment with several significant structural and geologic features. The water supply wells in the Rialto and Colton Groundwater Subbasins that are affected by perchlorate are located downgradient of the Pyro Spectaculars facility, Storage Bunker B-1, and the Astro Pyrotechnics facility.

The Executive Officer has issued Investigation Orders to Goodrich Corporation, Emhart Industries, Inc., Pyro Spectaculars, Inc., the U.S. Army Corps of Engineers (U.S. Department of Defense) and 15 other suspected perchlorate dischargers and property owners in North Rialto.

Findings

Section 13267(b) of the California Water Code authorizes the Board to require entities that are suspected of having discharged waste to submit technical reports.

Perchlorate has been detected in municipal water supply wells downgradient of the Pyro Spectaculars facility, former Bunker B-1, and the Astro Pyrotechnics facility. Pyro Spectaculars, Inc. is suspected of having discharged perchlorate waste that has adversely affected water quality. Accordingly, the Executive

Officer issued Pyro Spectaculars, Inc. an Investigation Order dated October 7, 2002, pursuant to Section 13267 (b).

Based on the evidence referenced in the October 7, 2002 Investigation Order, Pyro Spectaculars, Inc. was ordered to submit a work plan by November 7, 2002 for conducting an investigation of perchlorate in the vicinity of the 25-acre Pyro Spectaculars facility at 3196 North Locust Avenue, Rialto. On October 29, 2002, Board staff received a letter from Mr. James Good, attorney for Pyro Spectaculars, Inc., requesting a one-month extension of the compliance deadline for Pyro Spectaculars, Inc. to submit a work plan, in order to retain a qualified consultant and complete the work plan. On November 6, 2002, the Executive Officer approved the extension and directed Pyro Spectaculars, Inc. to expand the scope of the investigation to include the 5-acre Astro Pyrotechnics facility at 2298 West Stonehurst Drive, Rialto. The November 6, 2002 revised Investigation Order also informed Pyro Spectaculars, Inc. that failure to submit the required information by December 9, 2002, would subject Pyro Spectaculars, Inc. to administrative civil liability in the amount of up to \$1,000 per day pursuant to Section 13268(a) and (b) of the California Water Code.

On December 9, 2002, Mr. Good submitted two work plans, prepared by Kleinfelder, the environmental consultant for Pyro Spectaculars, Inc. The work plans proposed placement of several trenches at both the Pyro Spectaculars and Astro Pyrotechnics facilities, and one borehole on property adjacent to Storage Bunker B-1. Soil sampling and analysis methods were included in the work plans. The work plans did not include a time schedule for completion of the work. Staff reviewed and discussed the work plans with Mr. Good and Mr. Gary Brown of Pyro Spectaculars, Inc., and requested an opportunity to visit the Pyro Spectaculars and Astro Pyrotechnics facilities.

On February 6, 2003, Board staff met with Mr. Brown, and inspected Storage Bunker B-1 and the adjacent land, where several metal, mobile bins are used for storage of bulk fireworks. On this same day, Board staff visited the Astro Pyrotechnics facility, and inspected the work buildings, including those used for the manufacture of fireworks. Board staff observed concrete pads adjacent to the buildings. These concrete pads are used to collect the wash water and the accumulated liquids and sludge wastes that are generated during the fireworks manufacturing process. These waste materials are stored on the pads, transferred into plastic drums and shipped off-site for disposal.

On March 3, 2003, the Executive Officer conditionally approved the work plans for the investigation of both facilities. The Executive Officer's approval letters required that the work plan for the Astro Pyrotechnics facility be revised to include the collection of soil samples from the areas immediately beneath the existing concrete pads, instead of from areas adjacent to the pads as proposed in the work plan. In addition, a plan for temporary containment of the wash water

and waste materials was required to be implemented during the trenching activities at the site. The Executive Officer further required that Pyro Spectaculars, Inc. submit a plan for investigation of the former burn pit that historically was used for disposal of waste generated by Pyro Spectaculars, Inc. and other companies. The Executive Officer directed Pyro Spectaculars, Inc. to submit the written plan for temporary containment of the waste at Astro Pyrotechnics, and a detailed time schedule for completing the field work at both facilities, by March 19, 2003.

On March 19, 2003, Board staff met with Mr. Good, who indicated that Pyro Spectaculars, Inc. had been unable to revise and implement the work plans as required by the Executive Officer. Mr. Good further indicated that Pyro Spectaculars and Astro Pyrotechnics were facing severe operational and financial constraints pending completion of their summer "high" season for developing and conducting fireworks displays. Mr. Good requested that the field investigations be delayed until October 1, 2003. During the March 19, 2003 meeting, the Assistant Executive Officer informed Mr. Good that the requested postponement of the field investigation start date was not acceptable. Mr. Good agreed to confer with his client and develop a revised project schedule.

On April 1, 2003, Mr. Good submitted schedules for the perchlorate investigations at the Pyro Spectaculars and Astro Pyrotechnics facilities. These schedules allotted a period of seven weeks for the task of notifying and communicating with the property owners, and sixteen weeks to obtain approval to access the property that is already occupied by the Pyro Spectaculars and Astro Pyrotechnics facilities. The field work was proposed to begin during the last week of September 2003. Board staff telephoned and sent e-mail messages to Mr. Good and Mr. Brown, beginning on April 4, 2003 and continuing at least weekly throughout the month, requesting an opportunity to discuss the proposed time schedules for the investigations. Board staff received a response from Mr. Brown on April 30, 2003 via e-mail.

By telephone on May 1, 2003, staff informed Mr. Good and Mr. Brown that the time schedules for arranging property access, conducting research, and commencing the investigation were not satisfactory. Mr. Brown stated during this telephone call that his company would be unable to do any field work prior to October 2003. During further telephone and e-mail communications with Board staff in May and June 2003, Mr. Good and Mr. Brown revised the project schedules. On May 15, 2003, Mr. Good sent an e-mail message proposing a July 21, 2003 start date for the first phase of work. This proposal was acceptable to Board staff.

By letter dated July 3, 2003, the Executive Officer directed Pyro Spectaculars, Inc. to implement the on-site investigation activities in areas of the Pyro Spectaculars facility with a required starting date of July 21, 2003. In addition,

the Executive Officer directed Pyro Spectaculars, Inc. to submit the required work plan for investigation of the former burn pit by July 21, 2003. The schedule for field work at Astro Pyrotechnics was to be addressed in a separate letter, after the initial field investigation of the Pyro Spectaculars facility had commenced.

On July 18, 2003, Mr. Good left a voice mail message with the Board's Assistant Executive Officer stating that Pyro Spectaculars, Inc. was attempting to negotiate a settlement with the local water purveyors, in lieu of implementing the work plans. Mr. Good submitted a letter dated July 21, 2003, requesting a 45 to 60-day extension of the start date for the investigation. On August 4, 2003, Ann Sturdivant of Board staff spoke to Mr. Good by telephone, and notified him that the extension had not been granted, and that Pyro Spectaculars, Inc. was in violation of the Investigation Order.

On September 23, 2003, Pyro Spectaculars, Inc. presented a settlement offer to the City of Rialto. The City rejected this offer. Pyro Spectaculars, Inc. made no settlement offers to any other water purveyors.

Pyro Spectaculars, Inc. failed to implement the required work plan for the Pyro Spectaculars facility by the approved start date of July 21, 2003. Pyro Spectaculars, Inc. also failed to submit a work plan for the former burn pit by the July 21, 2003 deadline. Failure to comply with the approved time schedule for the required investigation, pursuant to the October 7, 2002 Investigation Order, as revised on November 6, 2002, is a violation of California Water Code Section 13268(a).

Section 13268(b) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed one thousand dollars (\$1,000) for each day that a violation of Section 13268(a) occurs. Therefore, on October 28, 2003, the Executive Officer issued the Complaint to Pyro Spectaculars, Inc. Pursuant to California Water Code Section 13268, the Complaint identified a total maximum assessment for which Pyro Spectaculars, Inc. is civilly liable of \$100,000, based on \$1,000 per day for 100 days of violation from July 21, 2003, through the date of the Complaint, October 28, 2003. The Complaint recommended that an assessment of \$95,000 be imposed on Pyro Spectaculars, Inc, with \$75,000 of that amount suspended provided that:

- a) The final reports for the investigations at the Pyro Spectaculars facility and the Astro Pyrotechnics facility are submitted to Board staff by December 15, 2003, and
- b) The burn pit investigation work plan is submitted to Board staff by November 26, 2003.

Board staff costs for all tasks associated with the Complaint amount to approximately \$18,620. These costs were considered in assessing the liability.

Throughout the past 11 months, Board staff has expended significant additional resources in seeking the technical information required by the Investigation Order from Pyro Spectaculars, Inc. In two separate letters to Mr. Good, dated May 12, 2003, the Executive Officer requested that both Pyro Spectaculars and Astro Pyrotechnics enter into voluntary cost recovery for Board staff oversight of the site investigations, pursuant to Section 13304 of the Water Code. The requested response date for Pyro Spectaculars and Astro Pyrotechnics was June 2, 2003; however, no response was received. Board staff continued to meet and confer with Pyro Spectaculars, Inc. and its attorney, assist the environmental consultant in preparing work plans, and review technical documents pertaining to the site investigations.

Section 13327 of the California Water Code specifies factors that the Board shall consider in establishing the amount of civil liability. These factors are addressed below:

1. Nature, circumstances, extent, and gravity of the violation

The Executive Officer issued the Investigation Order to Pyro Spectaculars, Inc., pursuant to California Water Code Section 13267 on October 7, 2002 (with revisions on November 6, 2002). The Order required that Pyro Spectaculars, Inc. submit a work plan and conduct an investigation for perchlorate in the soil and groundwater in the vicinity of the Pyro Spectaculars and Astro Pyrotechnics facilities in North Rialto. Pyro Spectaculars, Inc. knowingly and intentionally violated California Water Code Section 13268(a) by failing to submit the technical information required by the Investigation Order.

Perchlorate contamination of groundwater in the Rialto-Colton-Fontana area has resulted in either the closure or restricted use of 20 municipal water supply wells belonging to four water purveyors. These water purveyors have expended significant resources obtaining alternative water supplies. The California Water Code allows the Regional Board to require anyone who is suspected of discharging waste to furnish technical reports that the Regional Board requires. Parties that are suspected of discharging perchlorate in North Rialto that fail to submit work plans to conduct soil and groundwater investigations impede the Regional Board's ability to confirm the sources of perchlorate pollution in this area. Consequently, this delays the ability of the Regional Board to require identified dischargers to cleanup and abate the serious impacts to the beneficial uses of groundwater that exist in this area.

2. Whether the discharge is susceptible to cleanup or abatement

Based on the analytical data from testing of the groundwater in the Rialto, Colton, and Chino Groundwater Subbasins, perchlorate is present in the groundwater, and therefore it is evident that a discharge of perchlorate has occurred. The presence of this contaminant has resulted in severe and adverse impacts to the municipal water supply. Municipal Supply is a designated beneficial use of the Rialto, Colton and Chino Groundwater Subbasins. The discharge of perchlorate waste is subject to cleanup and abatement under Section 13304 of the California Water Code. Perchlorate that is present in the groundwater and perchlorate that may be present in soil at the Pyro Spectaculars facility, the former burn pit on adjacent property, the Astro Pyrotechnics facility, and Storage Bunker B-1 are susceptible to cleanup or abatement.

3. Degree of toxicity of the discharge

The degree of toxicity of perchlorate is currently under review by various State and federal agencies. Perchlorate is believed to be harmful to the human thyroid, especially in developing fetuses. The State Department of Health Services is currently in the process of establishing a Maximum Contaminant Level for drinking water. In the interim, an Action Level of 4 parts per billion is in effect to protect consumers from the adverse health effects from perchlorate in drinking water.

4. Discharger's ability to pay

Pyro Spectaculars, Inc. has not submitted any specific information to indicate that the company would be unable to pay the proposed assessment.

5. Effect of the penalty on the discharger's ability to continue in business

Pyro Spectaculars, Inc. has not submitted any specific information to indicate that the proposed penalty would have an effect on the company's ability to remain in business.

6. Voluntary cleanup efforts undertaken by the discharger

Pyro Spectaculars, Inc. has made no effort to initiate voluntary cleanup of the perchlorate contamination in the groundwater.

7. Prior history of violations

Board staff has no information regarding any prior history of violations of the California Water Code by Pyro Spectaculars, Inc.

8. Degree of culpability

The discharger is completely culpable for failure to implement the investigation work plans pursuant to the Investigation Order. Its failure to comply was intentional. Pyro Spectaculars, Inc. could have requested a hearing before the Board to review the Investigation Order, but did not do so.

9. Economic benefit or savings, if any, resulting from the violation

Two investigation work plans were prepared and submitted. The Executive Officer approved the work plans, and the time schedules. However, Pyro Spectaculars, Inc. failed to implement the required work plans by conducting the required site investigation activities in accordance with the approved time schedule. The economic benefit resulting from delaying the implementation of these work plans is significant. The cost of conducting a soil and groundwater investigation could range from several thousand dollars to well over one hundred thousand dollars.

After consideration of the above factors, the Executive Officer issued Administrative Civil Liability Complaint No. R8-2003-0114 to Pyro Spectaculars, Inc. in the amount of \$95,000. The Complaint further proposed that \$75,000 of that amount would be suspended under specified conditions.

Recommendation

Board staff recommends that the Board affirm Complaint No. R8-2003-0114 by adopting Order No. R8-2003-0115.

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

IN THE MATTER OF:

Pyro Spectaculars, Inc.
3196 North Locust
Rialto, CA 92377

Attn: Mr. James Souza, President

ORDER NO. R8-2003-0115
for
Administrative Civil Liability

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), held a hearing on November 21, 2003 to receive testimony and take evidence on the allegations contained in Complaint No. R8-2003-0114, dated October 28, 2003, and on the recommendation for the imposition of an assessment of civil liability pursuant to Water Code Section 13268 in the amount of \$95,000. The Board finds as follows:

1. Pyro Spectaculars and Astro Pyrotechnics, Rialto, California, are suspected of having discharged perchlorate waste that has adversely affected water quality. Accordingly, the Executive Officer issued an Investigation Order to Pyro Spectaculars, Inc., dated October 7, 2002, pursuant to subdivision (b) of California Water Code Section 13267
2. Based on the evidence referenced in the October 7, 2002 Investigation Order, Pyro Spectaculars, Inc. was ordered to submit a work plan by November 7, 2002, for conducting an investigation of perchlorate in the vicinity of the 25-acre Pyro Spectaculars facility at 3196 North Locust Avenue, Rialto. In a letter dated October 29, 2002, Mr. James Good, attorney for Pyro Spectaculars, Inc., requested a one-month extension of the compliance deadline for Pyro Spectaculars, Inc. to submit a work plan. On November 6, 2002, the Executive Officer approved the extension and directed Pyro Spectaculars, Inc. to expand the scope of the investigation to include the 5-acre Astro Pyrotechnics facility at 2298 West Stonehurst Drive, Rialto. The November 6, 2002 revised Investigation Order also informed Pyro Spectaculars, Inc. that failure to submit the required information by December 9, 2002, would subject Pyro Spectaculars, Inc. to administrative civil liability in the amount of up to \$1,000 per day, pursuant to Section 13268(a) and (b) of the California Water Code.
3. On December 9, 2002, Mr. Good submitted two work plans. Staff reviewed and discussed the work plans with Mr. Good and Mr. Gary Brown of Pyro Spectaculars, Inc., and requested an opportunity to visit the Pyro Spectaculars and Astro Pyrotechnics facilities.
4. On February 6, 2003, Board staff inspected Storage Bunker B-1 and the adjacent land, including storage containers that are used for bulk fireworks. On this same day, Board staff visited the Astro Pyrotechnics facility, and inspected the work buildings, including those used for the manufacture of fireworks. Board staff observed concrete pads being used to collect the wash water and the accumulated liquids and sludge wastes that are generated during the fireworks manufacturing process.
5. On March 3, 2003, the Executive Officer conditionally approved the work plans for the investigation of both facilities. The Executive Officer's approval letters required that the work plan for the Astro Pyrotechnics facility be revised to include the collection of soil samples from

the areas immediately beneath the existing concrete pads. The Executive Officer further required that Pyro Spectaculars, Inc. submit a plan for investigation of the former burn pit that historically was used for disposal of waste generated by Pyro Spectaculars, Inc. and other companies. Pyro Spectaculars, Inc. was directed to submit the written plan for temporary containment of the waste at Astro Pyrotechnics, and a detailed time schedule for completing the field work at both facilities, by March 19, 2003.

6. On March 19, 2003, Board staff met with Mr. Good. He stated that Pyro Spectaculars, Inc. had been unable to revise and implement the work plans as required by the Executive Officer, because Pyro Spectaculars and Astro Pyrotechnics were facing severe operational and financial constraints pending completion of their summer "high" season for developing and conducting fireworks displays.
7. On April 1, 2003, Mr. Good submitted schedules for perchlorate investigations at the Pyro Spectaculars and Astro Pyrotechnics facilities. Board staff informed Mr. Good and Mr. Brown, by telephone and e-mail, that the time schedules for obtaining property access and initiating the investigations were not satisfactory. After some delay, Mr. Brown contacted Board staff. Following several subsequent discussions with staff, Mr. Good and Mr. Brown proposed a July 21, 2003 start date for the first phase of work.
8. By letter dated July 3, 2003, the Executive Officer directed Pyro Spectaculars, Inc. to implement the on-site investigation activities in areas of the Pyro Spectaculars facility, with a required starting date of July 21, 2003. He also directed Pyro Spectaculars, Inc. to submit the required work plan by July 21, 2003 for investigation of the former burn pit. The letter stated that the schedule for field work at Astro Pyrotechnics was to be addressed in a separate correspondence.
9. On July 18, 2003, Mr. Good left a voice mail message with the Board's Assistant Executive Officer, stating that Pyro Spectaculars, Inc. was attempting to negotiate a settlement with the local water purveyors, in lieu of implementing the work plans. Mr. Good submitted a letter dated July 21, 2003, requesting a 45 to 60-day extension of the start date for the investigation. On August 4, 2003, Board staff notified Mr. Good by telephone that the extension had not been granted, and that Pyro Spectaculars, Inc. was in violation of the Investigation Order.
10. On September 23, 2003, Pyro Spectaculars, Inc. presented a settlement offer to the City of Rialto. The City rejected this offer. Pyro Spectaculars, Inc. made no settlement offers to any other water purveyors.
11. Pyro Spectaculars, Inc. failed to implement the required work plan for the Pyro Spectaculars facility by the approved start date of July 21, 2003. Pyro Spectaculars, Inc. also failed to submit a work plan for the former burn pit by the July 21, 2003 deadline. Failure to comply with the approved time schedule for the required investigation, pursuant to the October 7, 2002 Investigation Order, as revised on November 6, 2002, is a violation of California Water Code Section 13268(a).
12. Section 13268(b) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed one thousand dollars (\$1,000) for each day that a violation of Section 13268(a) occurs.

November 21, 2003

13. Pursuant to Section 13268, the total maximum assessment for which Pyro Spectaculars, Inc. is civilly liable is \$100,000, based on \$1,000 per day for 100 days of violation from July 21, 2003, through the date of the Complaint, October 28, 2003.
14. Board staff costs for all tasks associated with the Complaint amount to approximately \$18,620. These factors were considered in assessing the penalty proposed in Complaint No. R8-2003-0114.
15. Section 13327 specifies factors that the Board shall consider in establishing the amount of civil liability. These factors include: the nature, circumstances, extent, and gravity of the violation, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the discharger, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. The factors are analyzed in the Staff Report for the Regional Board's Hearing of Complaint No. R8-2003-0114, which is incorporated herein by reference.
16. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 2100 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED that pursuant to California Water Code Section 13268, civil liability is imposed on Pyro Spectaculars, Inc. in the amount of \$95,000 for the violations cited. It is further ordered that \$75,000 of the assessed amount is suspended, provided that:

- a) The final reports for the investigations at the Pyro Spectaculars facility and the Astro Pyrotechnics facility are submitted to Board staff by December 15, 2003, and
- b) The burn pit investigation work plan is submitted to Board staff by November 26, 2003.

The suspended portion (\$75,000) of the assessed liability shall become due and payable within 30 days of notification by the Executive Officer that the above provisions were not met.

The Executive Officer is authorized to refer this matter to the Attorney General for enforcement.

Pursuant to Water Code Section 13320, you may petition the State Water Resources Control Board for review of this Order. If you choose to do so, you must submit the petition to the State Board within 30 days of the Regional Board's adoption of this Order.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on November 21, 2003.

Gerard J. Thibeault
Executive Officer

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

IN THE MATTER OF:

Pyro Spectaculars, Inc.
3196 North Locust Avenue
Rialto, CA 92377

Attn: Mr. James Souza, President

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)
) COMPLAINT NO. R8-2003-0114
) for
) Administrative Civil Liability
)
)

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Pyro Spectaculars, Inc. operates two facilities in the City of Rialto, San Bernardino County, California: (1) Pyro Spectaculars, located at 3196 North Locust Avenue, and (2) Astro Pyrotechnics, located at 2298 West Stonehurst Drive. Pyro Spectaculars, Inc. is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose civil liability under Section 13268 of the California Water Code.
2. A hearing in this matter will be scheduled for the Board's regular meeting on November 21, 2003, at the Eastern Municipal Water District, 2270 Trumble Road, Perris, CA. Pyro Spectaculars, Inc. or its representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Board. An agenda for the meeting will be mailed to Pyro Spectaculars, Inc. not less than 10 days prior to the hearing date.
3. At the hearing, the Board will consider whether to affirm, reject or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. Pyro Spectaculars, Inc. is alleged to have violated subdivision (a) of Section 13268 of the California Water Code, which states "Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267...is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b)."
5. This Complaint is based on the following facts:
 - a) Pyro Spectaculars and Astro Pyrotechnics, Rialto, California, are suspected of having discharged perchlorate waste that has adversely affected water quality. Accordingly, the Executive Officer issued an Investigation Order to Pyro Spectaculars, Inc., dated October 7, 2002, pursuant to subdivision (b) of California Water Code Section 13267.

- b) Based on the evidence referenced in the October 7, 2002 Investigation Order, Pyro Spectaculars, Inc. was ordered to submit a work plan by November 7, 2002 for conducting an investigation of perchlorate in the vicinity of the 25-acre Pyro Spectaculars facility at 3196 North Locust Avenue, Rialto. On October 29, 2002, Board staff received a letter from Mr. James Good, attorney for Pyro Spectaculars, Inc., requesting a one-month extension of the compliance deadline for Pyro Spectaculars, Inc. to submit a work plan, in order to retain a qualified consultant and complete the work plan. On November 6, 2002, the Executive Officer approved the extension and directed Pyro Spectaculars, Inc. to expand the scope of the investigation to include the 5-acre Astro Pyrotechnics facility at 2298 West Stonehurst Drive, Rialto. The November 6, 2002 revised Investigation Order also informed Pyro Spectaculars, Inc. that failure to submit the required information by December 9, 2002, would subject Pyro Spectaculars, Inc. to administrative civil liability in the amount of up to \$1,000 per day pursuant to Section 13268(a) and (b) of the California Water Code.
- c) On December 9, 2002, Mr. Good submitted two work plans, prepared by Kleinfelder, the environmental consultant for Pyro Spectaculars, Inc. The proposed fieldwork for the Astro Pyrotechnics facility consisted of five exploratory trench excavations to collect soil samples for analysis of perchlorate. The proposed fieldwork for the Pyro Spectaculars facility consisted of three exploratory trench excavations and one soil boring to collect soil samples for analysis of perchlorate. In addition, each work plan proposed that, during the initial phase of the perchlorate investigation, Kleinfelder would review additional historical records pertaining to areas of waste disposal, and other areas where releases of perchlorate might have occurred.
- d) On February 6, 2003, Board staff met with Mr. Gary Brown of Pyro Spectaculars, Inc., and inspected Storage Bunker B-1 and the adjacent land, where several metal, mobile bins are used for storage of bulk fireworks. On this same day, Board staff visited the Astro Pyrotechnics facility, and inspected the work buildings, including those used for the manufacture of fireworks. Board staff observed concrete pads adjacent to the buildings. These concrete pads are used to collect the wash water and the accumulated liquids and sludge wastes that are generated during the fireworks manufacturing process. These waste materials are stored on the pads, transferred into plastic drums and shipped off-site for disposal.
- e) On March 3, 2003, the Executive Officer conditionally approved the work plans for the investigation of both facilities. The Executive Officer's approval letters required that the work plan for the Astro Pyrotechnics facility be revised to include the collection of soil samples from the areas immediately beneath the existing concrete pads, instead of from areas adjacent to the pads as proposed in the work plan. In addition, a plan for temporary containment of the wash

water and waste materials was required to be implemented during the trenching activities at the site. The Executive Officer further required that Pyro Spectaculars, Inc. include a plan for investigation of the former burn pit that historically was used for disposal of waste generated by Pyro Spectaculars, Inc. and other companies. The Executive Officer directed Pyro Spectaculars, Inc. to submit the written plan for temporary containment of the waste at Astro Pyrotechnics, and a detailed time schedule for completing the field work at both facilities, by March 19, 2003.

- f) On March 19, 2003, Board staff met with Mr. Good, who indicated that Pyro Spectaculars, Inc. had been unable to revise and implement the work plans as required by the Executive Officer. Mr. Good further indicated that Pyro Spectaculars and Astro Pyrotechnics were facing severe operational and financial constraints pending completion of their summer "high" season for developing and conducting fireworks displays.
 - g) On April 1, 2003, Mr. Good submitted schedules for the perchlorate investigations at the Pyro Spectaculars and Astro Pyrotechnics facilities. Board staff informed Mr. Good and Mr. Brown, by telephone, that the time schedule for investigation and additional research was not satisfactory. Mr. Good and Mr. Brown subsequently proposed a July 21, 2003 start date for the first phase of work, which was acceptable to Board staff.
 - h) By letter dated July 3, 2003, the Executive Officer directed Pyro Spectaculars, Inc. to implement the on-site investigation activities in areas of the Pyro Spectaculars facility with an approved starting date of July 21, 2003. In addition, the Executive Officer directed Pyro Spectaculars, Inc. to submit the required work plan for investigation of the former burn pit by July 21, 2003. The schedule for field work at Astro Pyrotechnics was to be addressed in a separate letter, after the initial field investigation of the Pyro Spectaculars facility had commenced.
 - i) On July 18, 2003, Mr. Good informed the Board's Assistant Executive Officer that he was attempting to negotiate a settlement between Pyro Spectaculars, Inc. and the local water purveyors, in lieu of implementing the work plans. Mr. Good requested a 45 to 60-day extension of the start date for the investigation. The extension was not granted. To date, Pyro Spectaculars, Inc. has not negotiated a settlement, nor commenced the required investigations at the Pyro Spectaculars facility, the Astro Pyrotechnics facility, Bunker B-1 and the former burn pit.
6. Pyro Spectaculars, Inc. failed to implement the required work plan for the Pyro Spectaculars facility by the approved start date of July 21, 2003. Pyro Spectaculars, Inc. also failed to submit a work plan for the former burn pit by the July 21, 2003 deadline. Failure to comply with the approved time schedule for the required

investigation, pursuant to the October 7, 2002 Investigation Order, as revised on November 6, 2002, is a violation of California Water Code Section 13268(a).

7. Section 13268(b) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed one thousand dollars (\$1,000) for each day that a violation of Section 13268(a) occurs.
8. Pursuant to Section 13268, the total maximum assessment for which Pyro Spectaculars, Inc. is civilly liable is \$100,000, based on \$1,000 per day for 100 days of violation from July 21, 2003, through the date of this Complaint, October 28, 2003.
9. Board staff costs for all tasks associated with this matter amount to approximately \$20,000. These costs were considered in assessing the liability proposed in Paragraph 11, below.
10. Section 13327 specifies factors that the Board shall consider in establishing the amount of civil liability. These factors include: the nature, circumstances, extent, and gravity of the violation, whether the discharge is subject to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the discharger, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require.
11. After consideration of the above factors, the Executive Officer proposes that civil liability be imposed on Pyro Spectaculars, Inc. in the amount of \$95,000, with \$75,000 of that amount suspended provided that:
 - a) The final reports for the investigations at the Pyro Spectaculars facility and the Astro Pyrotechnics facility are submitted to Board staff by December 15, 2003, and
 - b) The burn pit investigation work plan is submitted to Board staff by November 26, 2003.
12. You may waive your right to a hearing. If you waive the right to a hearing, please sign the waiver form that is Page 6 of this complaint, and submit it, with a cashier's check made payable to the State Water Resources Control Board in the amount of civil liability as described in the waiver form, to:

Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3339


Pyro Spectaculars, Inc.
Complaint No. R8-2003-0114

-5-

October 28, 2003

Any questions regarding this complaint should be directed to Ann Sturdivant at (909) 782-4904, Kurt Berchtold at (909) 782-3286, or the Regional Board's legal counsel, Jorge Leon, at (916) 341-5180.

10-28-03
Date



Gerard J. Thibeault
Executive Officer

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

IN THE MATTER OF:

Pyro Spectaculars, Inc.
3196 North Locust Avenue
Rialto, CA 92377

Attn: Mr. James Souza, President

)
)
) COMPLAINT NO. R8-2003-0114
) for
) Administrative Civil Liability
)
)

WAIVER OF HEARING

Pyro Spectaculars, Inc. agrees to waive its right to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2003-0114. Pyro Spectaculars, Inc. has enclosed a check in the amount indicated below. Pyro Spectaculars, Inc. understands that it is giving up its right to be heard and to argue against allegations made by the Executive Officer in Complaint No. R8-2003-0114, and against the imposition of, and amount of, the civil liability.

(check one)

☐ Enclosed is a check in the amount of \$95,000.

☐ Enclosed is a check in the amount of \$20,000. Pyro Spectaculars, Inc. will: submit the final reports for the investigations at the Pyro Spectaculars facility and the Astro Pyrotechnics facility by December 15, 2003; and submit a work plan by November 26, 2003 for investigation of the burn pit. Pyro Spectaculars, Inc. understands that the remainder of the assessed liability (\$75,000) will become due and payable unless these provisions are met.

Date

for Pyro Spectaculars, Inc.



California Regional Water Quality Control Board

Santa Ana Region



Winston H. Hickox
Secretary for
Environmental
Protection

Internet Address: <http://www.swrcb.ca.gov/rwqcb8>
3737 Main Street, Suite 500,
Riverside, California 92501-3348
Phone (909) 782-4130 - FAX (909) 781-6288

Gray Davis
Governor

October 28, 2003

Mr. James E. Good
Gresham, Savage, Nolan & Tilden, LLP
600 North Arrowhead Avenue, Suite 300
San Bernardino, CA 92401-1148

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2003-0114

Dear Mr. Good:

Enclosed is Complaint No. R8-2003-0114 assessing administrative civil liability against Pyro Spectaculars, Inc. for failing to implement the required work plans for the Pyro Spectaculars and Astro Pyrotechnics facilities in Rialto, California. Pyro Spectaculars Inc. also failed to submit a work plan for the former burn pit by the July 21, 2003 deadline. Unless Pyro Spectaculars, Inc. waives its right to a hearing, a public hearing on this matter will be held at the Santa Ana Regional Water Quality Control Board's meeting on November 21, 2003. This Board meeting will be held at the office of the Eastern Municipal Water District, 2270 Trumble Road, Perris, California. An Agenda and a staff report will be provided to you at least 10 days prior to the meeting.

If Pyro Spectaculars, Inc. chooses to waive its right to a hearing, please complete the enclosed waiver form and submit it to this office prior to the hearing, with a check for the amount of civil liability as indicated on the form. The check should be made payable to the State Water Resources Control Board.

If Pyro Spectaculars, Inc. does not wish to waive its right to a hearing, you should contact this office to schedule a pre-hearing meeting. At that time, you may submit information that may not have been previously available to staff regarding this matter. The information should address the following items:

1. Nature, circumstance, extent and gravity of the violation;
2. Susceptibility of the discharge to cleanup or abatement;
3. Your ability to pay the proposed assessment;
4. Effect on ability to continue in business;
5. Any prior history of violation;
6. Your degree of culpability;
7. Economic benefit, or savings, resulting from the discharge;
8. Such matters as justice may require.

Mr. James E. Good

- 2 -

October 28, 2003

If you have any questions, or wish to schedule a pre-hearing meeting, please call Kurt Berchtold, Assistant Executive Officer, at (909) 782-3286, or Ann Sturdivant, Chief of our SLIC/DOD Section, at (909) 782-4904.

Sincerely,

K. J. Thibault

Gerard J. Thibault
Executive Officer

Enclosures: 1. Administrative Civil Liability Complaint No. R8-2003-0114
2. Waiver of Hearing
3. Mailing List

cc w/enclosures:

Regional Board
Jorge Leon, SWRCB, OCC
James Souza, Rialto, California

cc w/o enclosures:

Inland Empire Perchlorate Regulatory Task Force (mailing list enclosed)

AES/data/SLIC2001-03 rialto perchlorate/13267/pyro ACLC transmittal

California Environmental Protection Agency

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